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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/550,649

04/17/2000

Jarod Guertin

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03/03/2006

DOUGHERTY CLEMENTS
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EXAMINER

KIM, DAVID S

ART UNIT

PAPER NUMBER

2633

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/550,649

Applicant(s)

GUERTIN ET AL.

Examiner

David S. Kim

Art Unit

2633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-22.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


**KENNETH VANDERPUYE
SUPERVISORY PATENT EXAMINER**

Continuation of 3. NOTE:

Applicant's proposed amendment introduces limitations absent from the previous version of the claims. In doing so, the proposed amendment raises new issues related to a change in the scope of the claims. A proper and sufficient response to these new issues would require further consideration and/or search.

In particular, notice the claim limitations regarding the following subject matter:

- the signal-to-noise parameter Q

This subject matter is particularly noted in independent claims 1, 5, and 9 and dependent claims 12, 16, and 18-19. This subject matter was absent from the previous version of the claims.

Additionally, Applicant's proposed amendment introduces limitations absent from the original disclosure of Applicant's invention. In doing so, the proposed amendment raises the issue of new matter. More exactly, Applicant's original disclosure teaches the monitoring of the Q parameter *of the system* (Applicant's specification, p. 13, l. 1-3). However, Applicant's original disclosure does not teach various *uses* of this Q parameter for *particular signals* and for *particular functions*. That is, notice the following uses of the Q parameter in the proposed claims of Applicant's proposed amendment:

- (claim 1) monitoring a signal-to-noise (Q) parameter *for the bit error rate test signal at each of the N optical transmitters and N optical receivers when the measured system bit error rate is greater than the predetermined system bit error rate threshold to thereby determine which of the N optical communication channels has an associated bit rate value that is greater/less than a specified bit error rate value*
- (claim 1) *comparing the monitored Q with a predetermined Q threshold, wherein the predetermined Q threshold corresponds to the predetermined system bit error rate threshold*
- (claim 5) identifying at least one faulty communication channel from said plurality of optical communication channels by performing a bit parity check *and a signal-to-noise (Q) calculation* for each transmitter/receiver pair because the measure bit error rate is greater than a predetermined system bit error rate threshold
- (claim 9) an internal performance monitor on said transmitters and said receivers, wherein said internal performance monitor monitors bit errors and *signal-to-noise parameters (Qs) of signals between said transmitters and said receivers*
- (claim 12) said monitoring monitors *a received signal Q for the bit error rate test signal*
- (claim 16) at least one faulty communication channel monitors *the signal Q of the bit error rate signal*
- (claim 18) the diagnostic analyzer is configured to analyze the diagnostic output signals from said transmitters and receivers *in response to monitoring a signal Q of the bit error rate signal input to each of said transmitters and said receivers*
- (claim 19) each of said transmitters and said receivers is configured to monitor *the signal Q of the bit error rate test signal*

Applicant's disclosure regarding the Q parameter of the system does not include all of these cited uses of the Q parameter. Accordingly, these various uses of the Q parameter, introduced by Applicant's proposed amendment, raise the issue of new matter.

Continuation of 13. Other:

Applicant's compliance with the objection to the drawings in the previous Office Action (mailed on 13 December 2005) is noted and appreciated. Applicant indicated the filing of a replacement sheet for Fig. 2 on 21 February 2006. However, this replacement sheet was not found by Examiner. Examiner respectfully requests Applicant to send another copy of this replacement sheet for Fig. 2. In the meantime, Examiner respectfully maintains the standing objection to the drawings.

Applicant's compliance with the objection to the specification in the previous Office Action (mailed on 13 December 2005) is noted and appreciated. Applicant responded by amending the specification. Applicant's response overcomes the previous objection, which is presently withdrawn.


KENNETH VANDERPUYE
SUPERVISORY PATENT EXAMINER